

SENIOR DISTRICT JUDGE ROBERT J. BRYAN  
MAGISTRATE JUDGE DAVID W. CHRISTEL

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

BERNARDINO GINO SANDOVAL,

Plaintiff,

v.

MIKE R OBENLAND, et al.,

Defendants.

NO. 3:17-cv-05667-RJB-DWC

DEFENDANTS' RESPONSE TO  
MOTION FOR PRELIMINARY  
INJUNCTION

The Defendants respectfully file their response to Sandoval's Motion for Preliminary Injunction. ECF No. 36.

**I. INTRODUCTION**

Sandoval alleges the Defendants have violated his constitutional right to marry former fellow inmate Alan French because the Department's previous marriage policy required that the prospective spouse be on the inmate's approved visitor list. Since Sandoval's release from Department custody on July 14, 2017, neither he nor French made any attempt to submit a marriage application under the revised policy. A policy which did not prevent their ability to marry. Sandoval is now in the King County jail because he has since been arrested and charged

1 with Assault in the First Degree-Domestic Violence against a roommate with whom he was  
2 engaged in a “romantic” relationship. ECF No. 30-1.

3 Sandoval now files a motion for a preliminary injunction asking the Court order the  
4 Defendants to “cease and desist the continuation of discrimination of same sex marriage in the  
5 Washington State Department of Corrections.” ECF No. 36 at 1. Because Sandoval cannot meet  
6 the heavy burden required of a Preliminary Injunction, the Court should deny his frivolous  
7 motion.

## 8 II. RESPONSE

### 9 A. Preliminary Injunction Standard

10 Injunctions are “to be used sparingly, and only in a clear and plain case.” *Rizzo v. Goode*,  
11 423 U.S. 362, 378 (1976) (quoting *Irwin v. Dixon*, 9 How. 10, 33 (1850)); *see also Sampson v.*  
12 *Murray*, 415 U.S. 61, 83 (1974). “A preliminary injunction is an extraordinary remedy never  
13 awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Instead,  
14 injunctive relief “may only be awarded upon a clear showing that the plaintiff is entitled to such  
15 relief.” *Id.* at 22. The party seeking injunctive relief must also “demonstrate that irreparable  
16 injury is *likely* in the absence of an injunction.” *Id.* (emphasis in original). The Supreme Court  
17 has clarified that to obtain preliminary injunctive relief, the party must show:

18 A plaintiff seeking a preliminary injunction must establish that he is likely to  
19 succeed on the merits, that he is likely to suffer irreparable harm in the absence  
20 of preliminary relief, that the balance of equities tip in his favor, and that an  
injunction is in the public interest.

21 *Winter*, 555 U.S. at 20.

22 Injunctions are disfavored and “not granted unless extreme or very serious damage will  
23 result and are not issued in doubtful cases or where the injury complained of is capable of  
24 compensation in damages.” *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1979)  
25 (quoting *Clune v. Publishers’ Ass’n of New York City*, 214 F. Supp. 520, 531 (S.D.N.Y. 1963)).  
26 This caution applies even more strongly in cases involving the administration of state prisons.

1 *Turner v. Safley*, 482 U.S. 78, 85 (1987) (“Prison administration is, moreover, a task that has  
 2 been committed to the responsibility of those [executive and legislative] branches and separation  
 3 of powers concerns counsels a policy of judicial restraint. Where a state penal system is involved,  
 4 federal courts have ... additional reason to accord deference to the appropriate prison  
 5 authorities.”); *Gilmore v. California*, 220 F.3d 987 (9th Cir. 2000).

6 **B. Sandoval Fails to Meet His Heavy Burden Showing that an Injunction is Warranted**

7 First, Sandoval is unlikely to succeed on his right to marry claim. He makes a conclusory  
 8 argument that the marriage policy prevents same sex marriages but provides no actual evidence  
 9 to support his allegations. There is nothing in policy that prohibits same sex marriage. Moreover,  
 10 there is nothing in the current policy which prevented Sandoval from fulfilling his wish of  
 11 marrying inmate Alan French. Sandoval was released from Department custody on July 14,  
 12 2017. Declaration of Patty Willoughby in Support of Defendants’ Response to Plaintiff’s Motion  
 13 for a Preliminary Injunction. Throughout his pleadings, Sandoval provides no evidence that he  
 14 or French made any attempt to marry during the eight months before Sandoval was arrested.  
 15 Sandoval presents no evidence to show he obtained a marriage license or made any other  
 16 affirmative step to actually marry French. Sandoval also fails to point to any actual wording in  
 17 the current policy which prohibits or would have prohibited his ability to marry French since his  
 18 release.

19 Additionally, while Sandoval has a fundamental right to marriage, that right is “subject  
 20 to substantial restrictions as a result of incarceration.” *Turner*, 482 U.S. at 95. “No doubt security  
 21 concerns may justify requiring the approval of the Superintendent.” *Id.* at 98. Penological  
 22 interests in ensuring compliance with the Prison Rape Elimination Act and having to move and  
 23 separate inmates involved in romantic relationships are rationally related concerns. Accordingly,  
 24 Sandoval is not likely to succeed on the merits of his claims and the Court should deny his  
 25 motion.

26 ///

1 Secondly, Sandoval is unlikely to suffer irreparable harm if a preliminary injunction is  
 2 not granted. Other than his self-imposed stay in jail, Sandoval provides no evidence to show he  
 3 is unable to marry French under the current policy and he failed to make any attempt to move  
 4 forward with a marriage during the eight months he had the opportunity.

5 Third, the balance of equities does not tip in Sandoval's favor as requiring the  
 6 Department facilitate marriages between two incarcerated inmates would be a clear drain on  
 7 Department resources. Finally, permitting incarcerated inmates to marry regardless of legitimate  
 8 penological concerns is not in the public's interest. The public has no interest in using additional  
 9 state resources to separate married inmates. Accordingly, Sandoval's request for injunctive relief  
 10 should be denied.

### 11 III. CONCLUSION

12 Sandoval has failed to meet his heavy burden for a preliminary injunction; therefore, his  
 13 request should be denied.

14 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of May, 2018.

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 26

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing Defendants' Response to Motion for Preliminary Injunction to be electronically filed with the Clerk of the Court using the CM/ECF system, and I certify that I mailed by United States Postal Service the document to the following non CM/ECF participants:

BERNADINO G. SANDOVAL BA #218007343  
MALENG REGIONAL JUSTICE CENTER  
DEPT. OF ADULT DETENTION  
620 WEST JAMES STREET  
KENT, WA 98032

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 30<sup>th</sup> day of May, 2018, at Spokane, Washington.

s/ Patty Willoughby

PATTY WILLOUGHBY

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